



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

SMC  
Docket No: 07224-99  
9 March 2000

SGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

Dear Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps, dated 10 January 2000 with enclosures, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

Specifically concerning the contested service record page 11 counseling entry dated 17 February 1999, the Board noted this entry does not state that you personally violated Base Order 5530.2, rather it states you allowed such a violation by another Marine. The Board was unable to accept your unsupported allegation that you were not present at the firing of a privately owned weapon aboard the base, and therefore did not warrant counseling for allowing this violation of the order to occur. You further allege that you did not warrant counseling for failure to report this incident, because you were unaware it had occurred. Even if you were, in fact, not present at the shooting, the Board found it would have been unreasonable for you not to have at least inquired as to whether the wounded animal might have been shot. In this regard, they noted your rebuttal to the entry of 17 February 1999 admits you did notice the animal was bleeding from the back of its head, and that the game warden was "standing over the animal with a rifle in his hands." Further, the Board found

nothing objectionable about the entry's not having mentioned that the incident was in the line of duty. They did not agree with your contention that the absence of any order specifically prohibiting the game warden from using a personal weapon to destroy an injured animal on the base means no order was violated. Finally, they were unable to accept your unsupported assertion that several game wardens who had used personal weapons to destroy animals on the base had not been reported.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

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IN REPLY REFER TO:

1070

MI

10 JAN 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]  
[REDACTED] USMC

- Encl: (1) Copy of Individual's Acknowledgment of Specific  
Instructions for Armed Security and Law Enforcement  
Personnel Regarding the use of Force  
(2) Copy of Sergeant [REDACTED] Rebuttal Statement for Page  
11 Counseling Entry Dated 990217

1. We reviewed Sergeant [REDACTED] application concerning his  
request for removal of the Administrative Remarks page 11 entries  
dated 980107 and 990217 from his service records.

2. MCO P1070.12, Marine Corps Individual Records Administration  
Manual (IRAM), authorizes commanders to make entries on page 11  
which are considered matters forming an essential and permanent  
part of a Marine's military history, which are not recorded  
elsewhere in the Service Record Book or the Marine's automated  
record and will be useful to future commanders.

3. The following comments concerning the page 11 entry dated  
980107 are provided:

a. The counseling entry meets the elements of proper a page  
11 counseling in that it lists specific deficiencies and  
recommendations for corrective action, where assistance can be  
found and state that the Marine was provided the opportunity to  
make a rebuttal statement. The Marine must annotate whether or  
not they choose to make such a statement and if made, a copy of  
the statement is filed in the service record. Sergeant [REDACTED]  
acknowledged the counseling entry by his signature and further  
declined to make a statement in rebuttal.

b. Sergeant [REDACTED] states that the page 11 entry is in error  
or unjust because he was subjected to a traffic stop by a Georgia  
State Patrol Officer for an inoperable headlight on his private  
motor vehicle, and not for DUI, however, there is no evidence  
submitted to support this claim.

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[REDACTED] USMC

c. In the absence of Sergeant [REDACTED] submission of evidence to support his request, this office initiated a telephone call to a Gunnery Sergeant [REDACTED] his immediate supervisor, at DSN: 567-5181. Gunnery Sergeant [REDACTED] stated that Sergeant [REDACTED] was the subject of a traffic stop for an inoperable headlight on his private motor vehicle and suspicion of DUI. The aforementioned Georgia State Patrol Officer whom effected the traffic stop also serves in the capacity as the Assistant Post Commander for the Georgia State Police Command Post located in the Albany vicinity.

d. Gunnery Sergeant [REDACTED] stated that the patrol officer made the decision to call Sergeant [REDACTED] immediate supervisor and other members of the Marine Corps Base Office of the Provost [REDACTED] (PMO) to arrange for someone to drive him home, thus avoiding having to arrest and process him for DUI.

e. Sergeant [REDACTED] statement that he did not receive a "citation for the headlight" and "not charged with any crime" is irrelevant, the INCIDENT of "poor judgment during an off-duty status" still occurred.

f. Sergeant [REDACTED] commander determined that the information contained in the page 11 entry was of permanent value to his career, thereby documenting this event per the provisions of the IRAM.

4. The following comments concerning the page 11 entry dated 990217 are provided:

a. The counseling entry meets the elements of proper a page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found and state that the Marine was provided the opportunity to make a rebuttal statement. The Marine must annotate whether or not they choose to make such a statement and if made, a copy of the statement is filed in the service record. Sergeant [REDACTED] acknowledged the counseling entry by his signature and further elected to make a statement in rebuttal, however it was not included in his application.

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[REDACTED] USMC

b. Sergeant [REDACTED] as well as other members of PMO to include game wardens of Marine Corps Logistics Base, Albany, Georgia must be informed and instructed on the use of deadly force and the use of appropriate firearms and ammunition while on-duty by officially acknowledging with their signature per Marine Corps Order 5500.6F. Enclosure (1) is submitted in support of this requirement and to display that Sergeant [REDACTED] officially acknowledged his understanding of those regulations, specifically concerning discharging of firearms and prohibited firearms and ammunition.

c. Sergeant [REDACTED] states that the page 11 entry is in error or unjust because he did not "discharged a weapon personally." however, he does acknowledges there was "an incident I failed to report.", whereas, it was his responsibility as the "on-duty Watch Commander for PMO", to report an incident that is in violation of Base Order 5530.2. It is noted that again, Sergeant [REDACTED] did not submit evidence to support this claim.

d. Sergeant [REDACTED] rebuttal statement was obtained by this office and is attached as enclosure (2). Sergeant [REDACTED] statement in his rebuttal to the page 11 entry is in conflict with what he claims in his application and noted in subparagraph 4c above.

e. The commander determined that the information contained in the page 11 entry was of permanent value to Sergeant [REDACTED] career, thereby documenting this event per the provisions of the IRAM.

5. One of the many leadership tools that commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that commander is authorized to document those efforts by a page 11 entry counseling entry per the IRAM. The Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation. In cases involving unsatisfactory performance, pattern of misconduct, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies, and afforded a reasonable opportunity to overcome those deficiencies as reflected in appropriate counseling and personnel records. All reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings.

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[REDACTED] USMC

6. In view of the above, it is recommended that Sergeant [REDACTED] request for removal of the page 11 counseling entries dated 980107 and 990217 be disapproved.

7. Point of contact is Mr. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
Head, Field Support Branch  
Manpower Management Information  
System Division

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INDIVIDUAL'S ACKNOWLEDGMENT OF SPECIFIC INSTRUCTIONS FOR ARMED  
SECURITY AND LAW ENFORCEMENT PERSONNEL REGARDING THE USE OF FORCE

Name (Last, First, M. I.)	Rank	SSN	Date
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1. Circumstances for which Deadly Force is Authorized. I am justified in using the weapon with which I am armed to apply deadly force only under conditions of extreme necessity, when all other means have failed or cannot reasonably be employed and only as a last resort. If such is the case, I may use deadly force:

a. ~~To~~ To protect myself or others if I reasonably believe that I or they are in imminent danger of death or serious bodily harm.

b. ~~To~~ To prevent acts which or the escape of those who reasonably appear to me to threaten property of information designated by my Commanding Officer as vital to national security.

Communication Center  
Richards Drive, Building 3500, Main Hallway - Door 2,  
Wing 100-Door 103

Vaults A and B, CMCC/CMS  
Richards Drive, Building 3500, Main Hallway - Door 50

Classified Publications Vault (Section 1)  
Slack Street, Warehouse 1121, Door 2A, Bay 2

LRCC Building  
Building 3700, Room 138

c. ~~To~~ To prevent the actual theft or sabotage of property that is, of itself, dangerous to others (i.e., explosives, weapons, ammunition, etc.), when it appears reasonably necessary to do so.

Bldg 2200, Shop 729

Small Arms Repair

Bldg 7121

HQBN Armory

ENCLOSURE (4)

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(1) No weapon is cleared without a supervisor (corporal or above) present and clearing is accomplished only in the designated area (i.e., clearing barrel).

(2) When returning a weapon to the armory/arms room, rounds will always be properly accounted for and turned in prior to clearing the weapon, unless a round has been chambered.

(3) Any violation of these policies or procedures is immediately reported to the proper authority.

i. ~~am~~ I am prohibited from using a privately owned firearm or ammunition on duty.

j. ~~am~~ During training exercises and testing. I will check my firearm and have it double checked by a supervisor, to ensure that no live rounds are in the weapon and that there is no magazine inserted in the weapon.

k. ~~am~~ I will comply with these principles when using less-lethal weapons or techniques such as handcuffs, baton, chemical spray, Military Working Dog, motor vehicle, etc., in such a manner that could cause death or serious bodily harm.

3. Acknowledgment. I have been instructed on the use of deadly force per MCO 5500.6F and acknowledge that I understand the basic rules for the use of force and weapons safety. I am aware of all areas aboard this installation that have been designated by the Commanding Officer as vital to national security for which the use of deadly force may be required.

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Rank/Printed Name  
\_\_\_\_\_  
Signature

ENCLOSURE (4)

ENCLOSURE (1)



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From: Sgt [REDACTED] 2896  
To: [REDACTED]

This is to refute the Page 11, 6105 entry in my Service Record Book dated 17 Feb 99. I was counseled on using poor judgment while on duty serving as a Military Police Watch Commander, in that I had knowledge of the unlawful discharge of a firearm aboard a Military reservation. The Base Game warden discharged a privately owned weapon in the commission of destroying an injured animal that had been struck by a vehicle. I was not dispatched to the scene, nor was the [REDACTED] notified to recall the Base Game warden. I was leaving PMO via the front hatch with [REDACTED] when [REDACTED] and [REDACTED] base Game warden were driving past the building, in [REDACTED] privately owned vehicle. When he saw us walking to our patrol car, [REDACTED] stopped the vehicle and informed me that he had struck [REDACTED] on perimeter road, between gate 2-5 and gate 3-0. [REDACTED] said that he thought the animal was still alive and that he and [REDACTED] were going there to see if the animal was still alive. I told them that I didn't know that there were [REDACTED] in the base and was going to follow them out to the scene to see it. Myself along with [REDACTED] followed them to the scene in our PMO patrol car. When we arrived at the scene, I tried to pull my vehicle around [REDACTED] vehicle so that I could turn on the patrol car spotlight and provide light as, it was 2100 and dark out, with no lights on the road. [REDACTED] had parked in a manner that prohibited me from pulling around his vehicle and he had exited the vehicle, left his drivers side door open with the engine still running. As I was pulling up to the scene, I noticed the bobcat was sitting up, with it's hind quarters on the ground. I parked my patrol car and myself along with [REDACTED] exited our vehicle. By the time I walked around my patrol car and [REDACTED] vehicle, [REDACTED] was standing over the animal with a rifle in his hands and the animal was lying on it's left side. I noticed the bobcat was bleeding from the back of it's head, with it's tail wagging. It continued to wag from side to side for one to two more minutes, then it stopped. [REDACTED] then went to the bed of his vehicle and returned with a heavy work type glove. The animal was then picked up by it's hind legs. At that time, myself and [REDACTED] returned to our patrol vehicle and departed the area. At no time did I see, hear or have knowledge of the animal being shot, I thought that the animal had died from the injuries sustained from being struck by the vehicle. I was asked the next morning by [REDACTED] why I had not notified him of the animal being shot. My immediate response was that the animal had not been shot, that it had died from the injuries sustained from being struck by the vehicle and that we never make notifications or logbook entries unless there is damage to persons or property when an animal is struck. The procedure is to notify the Game warden, who in turn goes to PMO and checks out a Government weapon and rounds, then destroys the animal if necessary. The base was experiencing a population control problem with beavers several month ago, in which they damming up pipes. The Game wardens used privately owned weapons to destroy the beavers and there were no entries or reports done. No one received Page 11/6105's for poor judgment or the illegal discharge of a firearm. Being that I did not hear, see or have knowledge of the animal being shot or knowledge of any weapon being discharged, I did not use poor judgment that evening while working as a Military Policeman.

Respectfully Submitted,

[REDACTED]  
Sergeant USMC

ENCLOSURE (2)